IN THE HIGH COURT OF JUDICATURE
AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.981 OF 2005

Shivaji Bhaguji Bhoi ...Petitioner
Vs.
The State of Maharashtra ...Respondent

Ms. Seema Gupta for the Petitioner
Mrs. S.D. Shinde, A.P.P for the State

CORAM: SHRI J.N.PATEL &
SMT. ROSHAN DALVI, JJ.
DATED: 6TH OCTOBER, 2006

P.C.

1. Heard learned Counsel.

2. The Petitioner has impugned the order passed by the competent authority rejecting his application for furlough. It is the case of the Petitioner that he has been convicted for having committed offence under Section 302 of the Indian Penal Code and sentenced to suffer imprisonment for life in Sessions Case No.19 of 2002 by virtue of this he is undergoing imprisonment for more than 2 years. He is entitled for being released on furlough but his application came to be rejected by the competent authority on the basis of adverse report, which has been confirmed by the District Magistrate.

3. On going through the affidavit in reply filed by Police Sub Inspector attached to Niphad Police Station, Nashik probably within who's jurisdiction the offence has taken place, what we find is that the Petitioner has been convicted for committing murder of one Rohidas Hari Pawar on having suspicion of illicit relations with his wife. The statements of witnesses annexed to the Petition indicates that the witnesses were relatives of the deceased, if the Petitioner is released on furlough, they have categorically stated that at the time of his conviction in the Court he has threatened the witnesses of dire consequences as and when he comes out of the prison.

4. On the last date, we expressed that the Competent Authority can reconsider the case of the Petitioner on imposing additional conditions like the Petitioner/prisoner would not enter the jurisdiction of Niphad Police Station and would reside at some other place where he can be made to mark his attendance at the nearest police station. On 29th September, 2006 when the matter came up for hearing the Competent Authority did not pass any orders in the matter and therefore, it was adjourned for want of instructions. Even today the learned A.P.P has no further instructions from the competent authority.

5. In our view the nature of the offence committed by the Prisoner and considering the motive which has been attributed to him for committing the offence, it is not such a case that the release of Prisoner on furlough would lead to breach of peace and tranquility in the area and therefore, the competent authority ought to have considered the adverse report of police in its proper context and ordered release of the prisoner on furlough by imposing additional terms and conditions in order to safeguard the interest of the relatives of the deceased and keep check on the prisoner's conduct while he is on furlough.

6. We have come across several cases in which the competent authority mechanically accepts the adverse police report without applying his mind to the individual cases and forming an independent opinion after taking into consideration the conduct of the prisoner in the prison and other facts which will go to indicate whether the prisoner has such a tendency to cause breach of peace and tranquility and there is a potent threat to the society and witnesses. The offences for which a prisoner is convicted and sentenced can also indicate whether the convict has such propensity.

7. Therefore, we direct the Respondent to release the

prisoner on furlough on the conditions that the Petitioner/Prisoner would reside out of the jurisdiction of Niphad Police Station where he is supposed to have committed the offence and shall not enter the jurisdiction of said police station while on furlough.

8. The Petitioner/Prisoner shall furnish the particulars of the place and person where he is going to reside during his leave and shall mark attendance at the nearest police station once in a week.

9. The Petitioner/Prisoner shall not commit any offence while on furlough and execute bond as required under the rules and comply with the usual terms and conditions for being released on furlough.

10. Rule made absolute in the aforesaid terms with cost which we quantify at Rs.5000/- .

11. The Respondent State would credit the cost awarded to the Petitioner/Prisoner in his Account in the prison within a period of 4 weeks from the date of passing of this order.

(SMT.ROSHAN DALVI, J.) (SHRI. J.N. PATEL, J.)